

THE OBJECTIVES OF TAKAFUL AND SHARIAH: TOWARDS THE ACHIEVEMENT OF MAQASID SHARIAH

Syahida Abdullah

Research Affairs Department
International Shariah Research Academy for Islamic Finance (ISRA)
Kuala Lumpur, Malaysia.

Email: syahida@isra.my

ABSTRACT

Takaful is a fast growing industry that has great market potential. It is largely due to the shariah principles embedded in it that emphasizes on the values of mutual help, brotherhood and shared responsibility with elimination of shariah prohibited elements such as interest (riba), excessive uncertainty (gharar), and gambling (maysir) in its business operation and in all its activities. These prohibited elements exist in conventional insurance which makes it obviously different from takaful. The objectives of takaful are seen to be in consistent with the objectives of shariah that aim to provide benefit and protection to the Ummah. The comprehensiveness of shariah objectives in takaful practices includes the perseverance of five fundamental elements in human's life that are: ad-din (religion), an-nafs (life), al-'aql (intellect), an-nasl (ancestry) and al-mal (property or wealth). The paper thus concludes by recognizing the importance of the relationship between shariah objectives and takaful objectives towards capturing greater takaful market share.

KEYWORDS: *takaful, maqasid shariah, wealth, mutual assistance, brotherhood and shared responsibility*

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1.0 INTRODUCTION

The size of the global takaful industry was estimated to continue its growth to 14 percent in 2014 in the estimated US\$2 trillion global Islamic finance markets; although the growth of the takaful markets has been impressive, the penetration rates in the Muslim countries market are generally low at an average of 2 percent (Global Takaful Insights, 2014). The challenge is to address poor penetration rate of takaful.

A proactive approach is needed to encourage greater penetration of the industry as there is wider opportunities beckon in emerging markets. This includes the initiative for takaful to replace conventional insurance as there is huge potential. It is in this regard, this paper attempts to provide a clear understanding to the market on the differences between conventional insurance and takaful which will consequently help takaful to capture a larger market share replacing conventional insurance. The concept of takaful is still relatively less understood to a number of people, especially those who have never attempted to learn or to expose themselves to this rather new realm. This paper therefore regards the differences between takaful and insurance is vital to be discussed, and consequently the paper will focus on exploring the relationship between the objectives of takaful and the objectives of shariah or maqasid shariah which underlines essential takaful features and principles.

Maqasid shariah aims to achieve success or *falah* in this world and the world hereafter. The comprehensiveness of maqasid shariah includes the objectives and purposes to abide by in all activities including economic activities such as finance, banking and takaful, and social activities. As Islam is a complete way of life, it provides comprehensive rules and norms for general principles of man behavior as detailed in the primary sources of reference in Islam, namely the holy Quran and the tradition and sayings of the Prophet (pbuh) or *Sunnah*.

Hence, this paper is organized into six sections: the first part provides an introduction to the paper; the second part presents the differences between takaful and conventional insurance, the third part discusses the concept of shariah objectives and its ethical principles; the forth part provides an overview of takaful, its concept and the philosophy underlying it; the fifth part discusses the relationship between shariah objectives and takaful objectives, and finally, the sixth part concludes the paper.

1.1 Objectives

Realizing the penetration rate of the takaful industry is poor, this study is carried out to impart the knowledge on the differences between conventional insurance and takaful, which is believed to increase the market penetration rate either directly or indirectly to Muslims and public generally. As such, this study regards it is important to highlight on the objectives of shariah and its relevance to the objectives of takaful as they are both based on Islamic principles that aim to provide benefit and protection to the society at large. Indeed, takaful is in complete

harmony with the objectives of shariah as outlined in the Quran and Sunnah.

2.0 THE DIFFERENCES BETWEEN TAKAFUL AND INSURANCE

Takaful differs from the conventional insurance in two aspects: conceptual and practical (Usmani, 2007). Conventional insurance is based on the concept of “the fortunate many helping the unfortunates few”, which is an encouraged deed in Islam; Surah al-Maidah 5:2;

“... and cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.”

Both takaful and conventional insurance are based on the same principles: utmost good faith, and indemnity; however, takaful has an additional requirement that is reference to the shariah principles in its conceptual and practical aspects. Takaful also has legal principle that is *tabarru'* which differs it from conventional insurance.

In terms of practicality, there are many differences between takaful and conventional insurance; they include the *modus operandi*, business operation or activities, investment policy, subscription or contribution, fund, insurable interest, cause of death to claim, agency commission, types of insurance and takaful, cover period, periodic contribution, risks covered, sharing of surplus, and governing or supervisory council. Nevertheless, this paper will highlight only the major differences between takaful and conventional insurance.

Takaful is a plan that provides protection, in which the participants mutually agree to share the risk or joint guarantee. Meanwhile, insurance is merely a transfer of risk from a policy holder to an insurance company. Takaful works on the basis of sharing, mutual cooperation and brotherhood by elimination of shariah prohibited elements such as interest (*riba*), excessive uncertainty (*gharar*), and gambling (*maysir*) in its business operation or activities. The element of *riba* is found in the contractually guaranteed payment, profit of investments paid to the policyholders' claims, and the investments of insurance funds in *riba* based financial instruments such as bonds. The element of *gharar* is obvious for instance in a scenario where there is no claim made, in which the insurance company gain profit, while the participant does not gain any profit. *Maysir* is found when the participant contributes an amount of premium with the intention to acquire a larger amount of money. On the other hand, all these prohibited elements exist in business operation of conventional insurance.

Lastly, there are governing bodies for takaful such as Shariah Advisory Committee, The National Shariah Advisory Council on Islamic Banking and Takaful and The Islamic Fiqh Academy, a subsidiary body of the Organisation of Islamic Conference; meanwhile, there is not any governing body for conventional insurance.

2.1 The Objectives of Shariah (Maqasid Shariah)

Maqasid shariah is the foundation for the shariah rules and regulations. Maqasid shariah provides the knowledge, understanding and justification for the principles of shariah. The aims of maqasid shariah is to benefit and protect the Ummah generally, and to discipline and structure the living in accordance with the Islamic values and principles as pronounced in the Quran and Sunnah.

While, maqasid shariah is generally understood as the goals and objectives of shariah, shariah is understood in the broader meaning and scope instead of reducing it into the domain of 'Islamic law' or 'Islamic rulings' (ahkam) pertaining to 'ibadah (that regulates God and Man relationship) or mu'amalah (that regulates man to man relationship). Shariah is essentially a system of life that encompasses all aspects of the creed and belief system ('aqidah), the legislation and rulings (ahkam) in Man – God relationship ('ibadah) and man – man relationship (mu'amalah) as well as the system of ethics and moral (akhlaq). Shariah covers the entire spectrum of Islamic life that include belief, moralities, virtues and principles of guidance, economic, political, cultural and civilizational matters that concern not only the Muslim community but the entire humanity (Berghout, 2006: 55). Shariah is the entire worldview of Islam that consists of the body of Divine guidance, its structure, format and construct (Abdul Rauf, 2002: 3).

This understanding comes from the original meaning of shariah as the "sources of water" or "path to a watering place". Shariah represents a body of Islamic teachings of life or a set of norms, values and laws that govern human way of life (Qur'an, 42: 13, 21, 45: 18). Shariah is therefore an all-embracing concepts and framework that exists to support human existence and provides the necessary means, principles and values to establish and flourish human well being. It revolves around human interest and exists for the sake of human wellbeing in worldly life and the hereafter (masalih al-'ibad) (Qur'an, 2: 30; 3: 191; 6: 165; 38: 27; 44: 38-39; 67: 1-2).

The highest purpose of the shariah is to guide the human being to preserve five fundamental elements in human's life that are: ad-din

(religion), an-nafs (life), al-'aql (intellect), an-nasl (ancestry) and al-mal (property or wealth). The preservation of ad-dinis simply understood as safeguarding the religion by complying to the principles of Islam, and protecting it from obliteration, which is vital for establishing and maintaining good spirituality.

In terms of preserving an-nafs, it refers to any lawful action which is permissible to do as a means of sustenance; for example, food, shelter, marriage and others. It is also to avoid harms on human's soul, which is protected through a set of divine law to overcome problems such as adultery, killing, theft and others.

On the preservation of al-'aql, it is referred to the protection of mind and human's intellect from any element that could diminish mental and intellectual ability. This includes drinking of alcohol, or anything of similar substance and effect that could ruin the mental and thinking ability.

The fourth fundamental element, preservation of an-nasl, which Islam has determined specific regulations for protecting man's dignity and preventing confusion of heredity through marriage. Such legal relationships and knowledge about it are important to prohibit adultery and the consequences that it can lead such as illegitimate children in societies. Thus, protection of an-nasl is important to create a harmonious society.

Finally, the protection of al-mal is one of the essential needs of human's life as Islam encourages Muslims to earn lawful earnings and prohibits income from illegal sources such as gambling, bribery, stealing, and anything that involves riba or usury. As such, protection of property or wealth is associated with economic activities that include Islamic finance. (Al-Khelaifi: 2004; Laldin: 2010; Dusuki and Bohrawa: 2011; Ahmed: 2011).

In Islamic economy, wealth should be circulated to all levels of people in order to realize human welfare so that maslahah (wellbeing) of individual and society is achieved. As Islamic economy includes Islamic finance activities that deals with allocation and appropriation of wealth from mobilization until utilization, the maqasid in hifz al-mal should therefore be comprehended with consideration of factors such as nature, function and role of wealth in relation to the primary objective of realizing human well being, individually and collectively, by acquiring the benefits (maslahah) and preventing the harms (mafsadah) (Qur'an, 5: 6).

2.2 Takaful Concept and Philosophy

Literally, the word takaful means guarantee; it derived from the word 'kafala'. In Arabic, the word takaful denotes reciprocity which means joint guarantee of both parties. With that, the concept of takaful is associated with its meaning which is based on mutual protection and shared responsibility whereby the participants jointly agree to contribute a sum of money in a form of donation into a shared pool with the intention to help each other in need of assistance that indirectly reduces the risk in case of any occurrence of peril. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines takaful as:

"a system through which the participants donate part of or all of their contributions which are used to pay claims for damages suffered by some of the participants. The company's role is restricted to managing the insurance operations and investing the insurance contributions."

(AAOIFI Financial Accounting Standard No.12)

Takaful is based on the divine concept of ta'awun, which means helping each other, or mutual assistance. The concept is as recommended in the holy Quran:

"Help (ta'awun) ye one another in righteousness (birr) and piety, but help ye not one another in sin and rancor, fear Allah, for Allah is strict in punishment."

(Al-Quran, 5:2)

The Prophet pbuh also praises such action:

"Whosoever removes a worldly hardship from a believer, Allah will remove from him one of the hardships of the hereafter. Whosoever alleviates the needy person, Allah will alleviate from him in this world and the next."

(Translation of Sahih Muslim, Book 32, No.6250)

Islam strongly recommends the spirit of brotherhood among the people so as to strengthen the relationship and care for each other. This is as stated in Sunnah:

"The place of relationships and feelings of people with faith, between each other, is just like the body; when one of its parts is afflicted with pain, then the rest of the body will be affected."

(Narrated by Bukhari 810-870 and Muslim Ibn al- Hajjaj .821-875)

Thus, the basic notion of takaful is to share the risk among all the participants involved, and to help each other, especially those encountering misfortunes. Simply, takaful is based on the concepts of mutual protection, shared responsibility, mutual assistance and brotherhood.

2.3 The Relationship between Shariah Objectives and Takaful Objectives

Realizing that maqasid shariah is meant for the well-being of mankind in this world and the hereafter, and its scope covers all ritual and non-ritual activities that include 'ibadah and muamalah, maqasid shariah is therefore an indispensable element in takaful and other Islamic financial systems.

The implementation of takaful is deemed to have a strong relationship in achieving the maqasid shariah. In preserving ad-din, takaful is able to realized it as its transaction begins with a contribution in the form of tabarru' (donation). This is regarded as sincere contribution of a person to a pool of contribution. The relationship between the participants and the risk pool (as managed by the Takaful Operator) is termed as 'tabarru'. All the contributions collected from the policyholders or participants are not meant for the transfer of risk as in conventional insurance but it is meant to help those who are struck with misfortune, which is considered as 'ibadah' (Fisher, 2013).

The objective of takaful implementation is also to realize the spirit of cooperation among the takaful participants (Al-Kurdi, 2014). The participation is also meant to provide protection to members in the group who face any form of calamity or disaster. Such spirit and practice are in line with the objectives of shariah, specifically preservation of life or an-nafs which encourages Muslims to do good deeds to self and others, and taking all preventive measures such as health precautions. For example, a participant could have various health products to maintain good health which is essential to every human need.

Takaful practices are free from prohibited elements such as riba, maysir and gharar, and its operations are lawful. Thus, participating in takaful is believed to create a peaceful heart and mind to both participants and takaful operators as they are not involved in unlawful or non-shariah compliant activities. Moreover, the income generated from takaful activities, which is free from prohibited elements would lead to earnings and gains that are blessed by the Almighty Allah. Indeed, a Muslim practicing true Islamic teaching with the avoidance

of prohibited elements, and illegal or unlawful activities such as the conventional insurance will onset the feeling of peace at heart and mind which would preserve the human's intellect or al-'aql.

Other than that, in terms of preserving the forth fundamental element of human being which is ancestor (an-nasl), it can be clearly viewed through the takaful product, namely Family Takaful. This is relevant because in such policy, the policyholders' family relations will benefit from the compensation that is paid after his/her demise (Fisher, 2013). Thus, the family members will be left with some financial assistance according to the conditions agreed. The compensation paid by the takaful operators is indeed vital to assist families especially those who have lost their main source of income provider.

Finally, takaful objectives also help in safeguarding the wealth and ownership of all parties involved, which is achievable through the elimination of the prohibited elements that include riba, maysir, and gharar. These elements are known to cause unjust and harm to any society as it leads to societal disorder and exploitation of one party to another party. Islam regards all transactions that involve explicit or implicit harm and injustice to one of the contracting parties or to the public at large as unlawful as it violates the Qur'anic injunctions, specifically in term of the consented business conduct (Balala, 2011: 6). In fact, the avoidance of the prohibited elements will help the economy to prosper.

In addition, the principles of fairness, transparency, and social justice in takaful appeal to the very greatness of the human spirit. Being transparent and fair in takaful dealings is considered among the main objectives of shariah and its activities. The Qur'an has stressed that all agreements and contracts should be as transparent and clear as possible (Qur'an, 2:282, 17:35, 11:84, 26:181-182, 55:9, 83:1-3).

Transparency means that all financial transactions must be conducted in such a manner that all the parties are clear about all important facts concerning the transactions. This information symmetry prevents the main cause of disputes and damage to any party in all dimensions of the contract. Specifically in the context of takaful, this would require the operators to explain in details the mode of contract and the whole practice and implications.

In the spirit of social justice, Islam balances individuals' rights and their duties and responsibilities towards others. This framework of social responsibility and mutual cooperation and assistance are

among the primary underlying objectives of takaful industry. The mutual dependency among society and mutual cooperation and social responsibility is as noted in several verses in the Qur'an, 2:255; 4:37; 8:74; 16:74. The presence of takaful therefore is really needed in society as human life is structured in a manner that necessitates the rich to help the poor and the needy group of people (Qur'an, 9:71; 24:22). Such social commitment is recommended in the Qur'an as a mark of the individual's spiritual ascent.

In a nutshell, takaful is able to achieve all the five fundamental elements as stated in the maqasid shariah. Takaful could bring equity to all parties involved, and help the participants by elevating their difficulties at difficult instances or misfortune moments. Simultaneously, the gain of profit is not the main goal; instead sharing of fund and risk are undoubtedly the main objectives of takaful which is in line with the objectives of shariah in terms of protections of ad-din (religion), an-nafs (life), al-'aql (intellect), an-nasl (ancestry) and al-mal (property or wealth).

3.0 CONCLUSION

Takaful which is based on the concept of mutual help, mutual responsibility and mutual protection is free from prohibited elements such as *riba*, *maysir* and *gharar*. It aims to provide mutual financial aid and assistance to the participants who suffer catastrophe or any other form of misfortune as its ultimate goal is not only in the concept and objectives, but also in all of its economic activities that includes the underlying contracts of takaful, the subject matter of the contract, the participants and the takaful operator that have to be shariah compliant.

Maqasid shariah as the objectives of shariah lays the framework for takaful operation that is based on values of mutual help and mutual sharing of fund and risk. The concept and objectives set in takaful are formed by the objectives of Islamic law that is concerned on preserving the religion, life, intellect, ancestry, and wealth. All these fundamental preservations are important in a Muslim's life, and the implementation of takaful is seen to have a strong relationship in achieving the *maqasid shariah*.

The application of shariah in the takaful practice and operation therefore does not result in injury, harm or difficulties to either individuals or the public at large as *maqasid shariah* aims at the accomplishment of benefits, welfare and advantages to the Ummah, while simultaneously

dispelling evil, greed, loss and disadvantages from the individual beings. Thus, *maqasid shariah* institutes some values, measures and standards to be upheld in the operations and indicates certain negative elements to be avoided, as they would nullify the objectives of shariah.

Hence, the takaful objectives supported by the spirit of cooperation or ta'awun, brotherhood and social equality and social justice, just and fair treatment of the participants' fund and achievement of general wellbeing or maslahah of the ummah similarly meets the objectives of shariah. Recognizing the objectives of takaful and the objectives of shariah are the same, it is therefore important for the takaful industry to concretely and effectively adhere to shariah principles in both its concept and operations in order to achieve the virtuous goals of Islam and lead the industry to greater success and larger penetration. Indeed, this paper believes that emphasis on such relationship is important to create confidence on shariah compliance of takaful products, which concomitantly would increase its market penetration. It is thus recommended that more studies are conducted in this field in order to educate the public largely and to capture the great potential market of takaful specifically.

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